IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.49 OF 2004

Sau Kamini Anup Taksale .. Petitioner

Versus

Anup Manik Taksale .. Respondent

Mr.R.P.Mudholkar for petitioner

Mr.A.B.Apte with G.G.Zambre for respondent

CORAM : P.V.KAKADE, J.

DATE : 29TH OCTOBER, 2004.

P.C.:

1. This is an application filed by Petitioner-wife against the Respondent-husband for transfer of Divorce Petition bearing No.P.A. 157 of 2003 from Family Court, Pune to the Court of Civil Judge, Senior Division, Nasik where she resides.

2. I heard the learned counsel for both the sides.

3. At the outset it appears that marriage between the parties took place in the year 1999. Immediately thereafter quarrels between the parties began. There is a child begotten from the marriage, which at present is three and half years old and in custody of the Petitioner-wife. She is at present residing with her parents. Initially the Respondent had filed proceeding for restitution of conjugal rights, however, it was withdrawn and Divorce Petition is thereafter filed by the respondent in Family Court, Pune on the ground of desertion as well as ill-treatment. It is the case of the Petitioner that her child is suffering from bronchial asthma and due to her precarious financial condition she is unable to travel from Nasik to Pune on every time to attend the dates. According to her the proceeding is fixed for hearing but she is unable to travel to Pune leaving her child behind. If she carries her child with her the child invariably suffers from bronchial attack and therefore it has become impossible for her to attend the proceedings at Pune.

The respondent in his affidavit in reply stated that not only the proceeding in question is right for hearing but

actually the hearing is commenced which fact is denying by the petitioner in her rejoinder. The rejoinder of the wife challenges the contents of the affidavit in reply. It appears that the respondent's affidavit in reply only denies the allegations and submissions made by the wife in general terms.

4. Taking into account all relevant aspect and fact that the Petitioner's child, who suffers from bronchial asthma, which fact is again supported by medical certificate, would support the plea of the petitioner, especially when it is apparent that she has financially restless and cannot afford to travel to Pune on every date fixed in the said proceeding. In view of this aspect and the fact that the respondent is not attending this proceeding, I am inclined to grant application in the interest of justice with certain directions.

. Hence the application is made absolute in terms of prayer clauses (a) and (b). The Divorce Petition No.P.A.157 of 2003 pending in Family Court, Pune stands transferred to the Court of Civil Judge, Senior Division, Nasik with immediate effect. The Civil Judge, Senior Division, Nasik is hereby directed to expedite

the hearing of the matter so as to complete the adjudication on merits after giving opportunities to both the sides to lead evidence, if any, within six months from the receipt of the Writ of this Order. The Principal Judge of the Family Court, Pune is directed to transmit the record and proceedings of the matter to the Court of Civil Judge, Senior Division, Nasik immediately.

. In view of the facts and circumstances there shall be no order as to costs. With this direction the Application stands disposed of.